

The quality of must-carry signals may also be compromised if an adjacent channel is trapped for the purpose of signal security. Must-carry requests and channel selections will impede an operator's ability to "block" groups of channels in order to maintain signal quality. For example, broadcast and basic satellite service channels may be confined to the first two-thirds of a bandwidth, while premium channels are positioned within the last third of the bandwidth. A must-carry station could select channel 2 for carriage, while HBO is carried on channel 3 and is scrambled/trapped for security purposes. Granting the station its selection of channel 2 would diminish its own signal viewability on channel 2 and would create signal security problems for the premium pay service on channel 3.

Thus, in any dispute involving identical broadcaster choices, the operator should have maximum discretion. A flexible standard for these technical determinations should include consideration of the potentially substantial cost and inconvenience to subscribers and to the operator.

(d) Preexisting Operator/Cable Programmer Agreements Should Be Afforded Significant Weight By The FCC

Many operators such as Continental have clauses in their programming contracts that guarantee a basic satellite network a particular channel position or that provide substantial financial penalties if the network loses that position. A broadcaster's choice of channel position could potentially override such a provision. The FCC rules should provide that if a broadcaster's

channel selection conflicts with a valid contract entered into prior to the date of enactment of the 1992 Cable Act, the cable operator can postpone accommodating that channel request until the termination date of the contract.

Operators and satellite network programmers should not have their legitimate contractual expectations as to channel positioning upset prior to the end of their existing contracts. If the FCC fails to take this action, it should at a minimum clarify that operators cannot be held contractually liable for contract violations caused by a broadcaster's channel position choice.

4. The FCC Should Also Adopt A Flexible Approach To Engineering Issues In The Must-Carry Area

(a) Signal Strength

Section 614(h)(1)(B) clearly states that an otherwise qualified local broadcast station can be denied carriage if it does not deliver a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the "input terminals of the signal processing equipment" at the principal headend of a cable system. A broadcaster failing to deliver such a signal is only entitled to carriage if it agrees to pay the costs of "delivering to the cable system a signal of good quality or a baseband video signal." The statute raises several issues of concern that the Commission needs to address in its final order.

Continental's engineers have noted the apparent technical deficiencies in the statutory language. For example, cable

operators have in the past furnished their headends with towers, antennae, RF amplifiers and other equipment to receive over-the-air signals. The statute makes no reference to this type of equipment, however. It specifically requires that the appropriate signal level be delivered at the "input terminals of the signal processing equipment."

The Commission will need to consider whether it needs to define "signal processing equipment," but we would note that none of the traditional equipment used to receive over-the-air broadcast stations, such as towers and antennae, actually processes signals. The only headend equipment capable of this task is the heterodyne converter (or demodulator) for over-the-air signals or the video processing amplifier for baseband video. As written, the Act specifically requires that any headend costs associated with over-the-air reception and bringing a broadcaster's signal strength up to the required level would have to be borne by that broadcaster.

Given that the statute does not obligate the cable operator to provide reception equipment for the over-the-air signals, the Commission's rules should not require operators to make any alteration of the existing tower/antenna facilities to accommodate the reception of such signals. For signals that are delivered by broadcasters, the Commission will also need to set a number of specifications, such as (for RF signals): the noise figure or signal to noise ratio, the suppression of out of channel RF signals (ingress) or other spurious RF energy, and the

frequency stability of the carrier; and (for baseband video) the definition of baseband video signal as RS-170-A video; the signal to noise ratio; the ingress susceptibility of the broadcaster's cable delivering the baseband signal; and the suppression of out of channel RF signals (ingress) or other spurious RF energy.

(b) Content of Signal Carried

Operators can delete signal enhancements (ghost-cancelling) from the signal of commercial stations and employ such enhancements at system headends. The FCC asks whether it should presume that cable operators can do the same with noncommercial signals.^{20/} The FCC also asks when carriage of certain information in the vertical blanking interval or on subcarriers is "technically infeasible."^{21/}

Operators can remove particles of information that are present in vertical blanking intervals and insert them for purposes of scrambling noncommercial signals. If systems are required to carry certain information in vertical blanking intervals, then scrambling is not possible because of the necessary deletion of information. The inability to scramble presents a risk of theft of signals as well as inherent technical problems with channel mapping. Carrying material on the VBI may not be possible in the future because of compression, ATV, HDTV

^{20/} NPRM at ¶ 32.

^{21/} NPRM at ¶ 32.

or other technological unknowns. The FCC should not venture beyond the statute on this point.

In most cases, Continental currently passes through the entire signal, including the VBI. However, we believe that the nonvideo and audio portion of the signal is in fact our own "property," because we may need to use it for our own legitimate business purposes (e.g., for test signals). Further, we can foresee a situation where someone leases the VBI from a broadcaster to transmit information that is received by a decoder tuned to a specific frequency. Should we ever move this broadcaster, for whatever reason, our customers would hold us responsible for interrupting a service that is provided by someone other than the broadcaster (indeed we may not even know what is being put on the VBI).

From a "technically feasible" point of view, there is the possibility that some of those signals may not pass through a baseband converter, i.e. SAP channels. Because it is difficult today to project how these signals might be used in the future, any FCC rules on this subject should contain provisions that hold cable operators harmless for their deletion.

(c) Signal Quality

Operators must carry local commercial stations "without material degradation."^{22/} The FCC asks whether there are any changes needed to the current and recently revised Cable

^{22/} Section 614(b)(4)(A) of the 1992 Cable Act.

Technical Standards to assure that this mandate causes no significant burden on operators.^{23/}

The cable operator should not be held accountable for any interference induced into the signal prior to reception, such as electrical interference or co-channel interference with another broadcaster on the same frequency and any interference caused by the subscriber's equipment (TV, VCR) picking up co-channel interference as a result of being improperly shielded.

Current technical standards are sufficient to ensure that there is no significant degradation of the signal. The cable operator's responsibility for a good signal, however, should end at the customer's terminal.

Retransmission Consent

1. The Impact Of The Broadcaster/Copyright Holder Relationship On Retransmission Consent

The FCC seeks comment on whether a broadcast station needs to obtain permission from copyright holders before granting retransmission consent. The FCC suggests that the Act's rights to grant retransmission consent can be superseded by existing or future agreements between program suppliers and broadcasters that require a broadcaster to obtain a copyright holder's permission before granting retransmission consent.^{24/} We disagree.

^{23/} NPRM at ¶ 35.

^{24/} NPRM at ¶ 65.

Continental does not accept the validity of retransmission consent. We believe that it is logically and legally incompatible with the compulsory copyright license. However, prior to a judicial interpretation on this issue, the FCC has no choice but to try to reconcile retransmission consent with existing copyright law. The only logical way to do so would be to separate the broadcast signal from the programming carried on it.

The broadcaster must be permitted to grant the operator the right to retransmit its signal only, because the operator already has the legal right through the compulsory copyright license to carry the underlying programming. The entire legislative history of the 1992 Cable Act suggests that no compensation going from the cable operator to a broadcaster is intended for copyrighted programming, because that is a separate legal right.^{25/}

If the FCC chooses not to find that there is a total separation of rights of the broadcaster and copyright holder, and that the copyright holder can contractually prohibit the broadcaster from granting retransmission consent without its

^{25/} See, e.g., H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 76 (1992) ("[c]able systems carrying the signals of broadcast stations, whether pursuant to an agreement with the station or pursuant to the provisions of new sections 614 and 615 of the Communications Act, will continue to have the authority to retransmit the programs carried on those signals under the section 111 compulsory license." Similarly, the Senate Report states that "[t]he principles that underlie the compulsory copyright license of section 111 of the copyright law (18 U.S.C. 111) are undisturbed by this legislation." S. Rep. No. 92, 102d Cong., 1st Sess. 36 (1991).

approval, a copyright holder's "control" over a broadcaster's consent should, at a minimum, be limited to circumstances in which a broadcaster is to receive cash compensation only. The copyright holder cannot under any logical theory control the broadcaster's other "uses" of its own signal, such as by negotiating with a cable operator for local advertising availabilities, cross-promotions and channel position.

2. The Broadcaster's Election Date For Retransmission Consent Should Be By June 1, 1993 Initially And By April 1 Each Subsequent Three Years

The statute mandates that as of October 5, 1993, a cable operator may not carry local broadcast signals for which it lacks retransmission consent, if the qualified broadcaster has elected that option over must-carry. The statute is silent, however, as to precisely when the broadcaster should make such an election.^{26/} In the NPRM, the FCC raises the issue of identifying an appropriate date prior to October 5, 1993 for this election.^{27/} Continental strongly agrees with the Commission in seeking an earlier mandatory election date, which is critical to insure the workability of these rules and minimize disruptions in service and confusion for cable subscribers, broadcasters and cable operators.

To assure the smoothest transition to the post-October 5, 1993 period, Continental suggests that the initial choice by

^{26/} See Section 325(b)(3)(B) of the 1992 Cable Act.

^{27/} NPRM at ¶ 50.

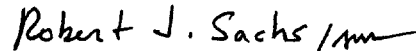
qualified broadcasters should be made by June 1, 1993. This will permit adequate time for a host of logistical and technical tasks which must be carried out in advance of October 5.

For example, a June 1 date will permit adequate time following the broadcaster election for cable operators to negotiate carriage with any number of broadcasters who might choose retransmission consent. A June 1 election date would also allow 90 days for negotiations and at least 30 days prior to October 5 to notify subscribers as to changes in the channel lineup^{28/} and provide time prior to that to make any necessary revisions to channel lineup cards sent to subscribers. In addition, there are myriad technical changes necessary, including the installation or reengineering of thousands of traps in nonaddressable cable systems and headend engineering changes for reconfigured channel lineups. Finally, cable operators may well need to order and arrange for home installation large numbers of A/B switches for circumstances in which operators have not been granted consent to carry a broadcaster's signal. Given that the FCC's final rules in this area will not be promulgated until early April, June 1 is the earliest workable date for the broadcaster election giving sufficient time for all of the work needed following that election.

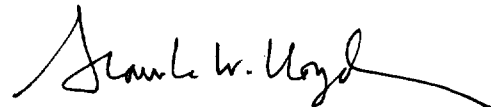
^{28/} For example, Section 615(g)(3) of the Act requires a cable operator to provide written notice to all subscribers at least 30 days prior to repositioning involving local noncommercial stations. See also NPRM at ¶ 37.

In future years, we suggest that a broadcaster's reelection should be required three months prior to the start of the July 1 copyright period, meaning by April 1. This would help ensure that cable operators would not have to make lineup changes in the middle of copyright periods, and potentially force operators to pay for a full copyright period for distant signals which might have to be dropped before the expiration of that period.

Respectfully submitted,



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APPENDIX

CONTINENTAL CABLEVISION

PROPOSED FCC BROADCAST SIGNAL MUST-CARRY AND RETRANSMISSION CONSENT RULES

1. Designation of "Principal Headend" for Determining Carriage Rights of Noncommercial Broadcast Television Stations

For purposes of the required carriage of local noncommercial broadcast television stations, a cable operator may designate or redesignate any headend serving its cable system as the "principal headend," provided that the designation is not for the purpose of averting the operator's must-carry obligations. A noncommercial broadcast television station challenging an operator's designation shall have the burden of demonstrating by a preponderance of the evidence that the designation was made by the operator for such purpose.

2. Definition of a Commercial Broadcast Television Station's Location and Market for Determining Its Carriage Rights

- a) For purposes of required carriage of local commercial broadcast television stations, a cable system shall be deemed to be located in the entire geographic area served by the system when determining which television market the cable system is located in, as limited by Sections 2(b)-(e) below.
- b) The following factors may be considered by the Commission in determining whether to add or subtract communities served by a cable system from a particular station's television market:
 - 1) whether the station was historically carried in the community;
 - 2) the extent of a station's local news coverage and other local programming or community service;
 - 3) local viewing patterns in cable and noncable homes in the community;
 - 4) whether the station is significantly viewed over-the-air in the community, as defined in §76.54.
 - 5) the disruption to cable subscribers in the community, including the number of stations that

would have to be dropped and/or added and any changes in channel positions;

- 6) the cost to either the cable operator or subscribers of the various alternatives;
 - 7) the overall impact on a community; and
 - 8) any other factor that the Commission may deem relevant in a particular instance.
- c) Only under extraordinary circumstances may communities located more than 50 miles from the broadcast station's principal transmitter be deemed to be part of the same television market as the station. Where a broadcaster is requesting such a determination, it shall have the burden of demonstrating such extraordinary circumstances by a preponderance of the evidence.
- d) Except where a community is located more than 50 miles from the broadcast station's principal transmitter, the Commission shall favor maintaining a community in the same television market as in-state broadcast stations.
- e) Where a community is located in multiple ADIs, at least 20 percent of the cable subscribers in the community must be located in a particular ADI for the entire community to be deemed part of that ADI. In such a situation the cable operator shall have the option to choose to be deemed part of any or all ADIs in which at least 20 percent of its subscribers are located. In the absence of such election by the operator, the Commission may deem that the community is part of multiple ADIs.
- f) Broadcasters, cable operators, or other parties seeking to have the Commission add a community to or subtract a community from a particular television market shall file a petition for special relief under §76.7.

3. **Stations Not Entitled to Retransmission Consent**

Commercial broadcast television stations that are not permitted to impose must-carry obligations on a cable system are not entitled to exercise retransmission consent rights on that cable system, and may be carried by such cable system.

4. Definition of "Substantially Duplicated" Noncommercial and Commercial Stations

- a) A noncommercial broadcast television station shall be deemed to be "substantially duplicated" if more than 50 percent of the programming aired during a one week period, whenever aired during the week, is the same on a second station entitled to carriage.
- b) A commercial broadcast television station shall be deemed to be "substantially duplicated" if more than 50 percent of the station's prime time programming during a one week period, whenever aired during prime time, is the same on a second station entitled to carriage.
- c) In any dispute between a broadcast station and a cable operator involving whether such station is "substantially duplicated," the broadcast station shall have the burden of proof, which must be met by a preponderance of the evidence.

5. Signal Viewability

Commercial broadcast television stations entitled to carriage shall be viewable via cable on all television receivers of a subscriber that are connected to a cable system by a cable operator or for which a cable operator provides a connection, except:

- a) where viewability is impaired due to co-channel interference beyond the reasonable control of the cable operator; or
- b) where viewability is impaired due to other technical problems beyond the operator's reasonable control; or
- c) for receivers of commercial subscribers that have contracted for specific channel line-ups; such contracts shall be kept by the operator for inspection by the FCC and/or broadcast stations otherwise entitled to carriage.

6. Channel Positioning

- a) Except as limited by Section 6(b)-(c) below, commercial broadcast television stations carried on a cable system pursuant to the cable operator's must-carry obligations

shall be carried at the channel position on which the station was carried on the system on January 1, 1992, or on which it is available over-the-air, or on which it was carried on the system on July 19, 1985, at the election of the station, or on any other mutually agreed upon channel; noncommercial television broadcast stations carried on a cable system pursuant to the cable operator's must-carry obligations shall be carried at the channel position on which the station is available over-the-air, or on which it was carried on the system on July 19, 1985, at the election of the station, or on any other mutually agreed upon channel.

- b) Where two or more broadcast television stations have claimed the rights to the same channel position on a cable system, the cable operator shall give first preference to the station that was carried on the system on that channel as of January 1, 1992. If none of the stations were so carried, then priority shall be given to the station that is carried over-the-air at that channel position.
- c) A broadcast station shall not be entitled to carriage at the channel position it is otherwise entitled to under Section 6(a), above, and may be carried on a channel position deemed appropriate by the cable operator, where:
 - 1) carriage at the specified channel position would result in a signal that failed to meet the Commission's signal quality standards for reasons that are technically outside the cable operator's reasonable control;
 - 2) the station is offered as part of a basic tier that consists of only broadcast stations and PEG channels and the broadcaster's choice of channel position would impose unreasonable costs for the provision of this tier;
 - 3) carriage at the specified channel position would cause unreasonable risks of theft of cable signals; or
 - 4) a contract entered into prior to October 5, 1992 (but not any contract extension or renewal of such contract) gives another broadcast station or other programming entity the rights to be carried at the specified channel position.

7. Engineering Issues

- a) Broadcast stations otherwise entitled to carriage need not be carried by a cable operator if they fail to deliver a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment at the cable system's principal headend. A broadcast station that fails to deliver such a signal level shall be entitled to carriage only if it pays the costs of delivering to the cable system a signal of good quality or a baseband video signal.
- b) Cable operators shall not be required to install, modify, or maintain any equipment at the principal headend designed to receive broadcast signals.
- c) For radio frequency (RF) signals delivered by broadcasters, the following specifications shall apply:
 - 1) the noise figure or signal to noise ratio shall be _____;
 - 2) broadcasters shall suppress out-of-channel signals (ingress) or other spurious RF energy that exceeds _____; and
 - 3) the frequency stability of the carrier shall be _____.
- d) For baseband video signals, the following specifications shall apply:
 - 1) "baseband video signal" is defined as RS-170-A video;
 - 2) the signal-to-noise ratio shall be _____;
 - 3) the ingress susceptibility of the broadcaster's cable delivering the baseband signal shall not exceed _____; and
 - 4) broadcasters shall suppress out-of-channel signals (ingress) or other spurious RF energy that exceeds _____.
- e) Cable operators may delete signal enhancements (ghost-cancelling) from the signal of commercial and

noncommercial stations and employ such enhancements at system headends.

- f) Cable operators are not required to retransmit information contained in the vertical blanking interval (VBI), except for program-related material to the extent technically feasible. Cable operators shall not be responsible for any losses due to the deletion of information contained in the VBI.
- g) Cable operators shall not be responsible for any interference induced into a broadcast signal prior to reception by the operator (such as electrical interference and co-channel interference with another broadcaster on the same frequency), or for any interference caused by subscriber equipment (such as a TV or VCR) picking up co-channel interference as a result of being improperly shielded.

8. Copyright Holders' Rights in Retransmission Consent

A copyright holder may not prohibit or otherwise impede a commercial broadcast television station from granting retransmission consent to a cable operator.

9. Timing of Broadcaster Election Between Must-Carry and Retransmission Consent

A commercial broadcast television station shall make its initial election between must-carry and retransmission consent by June 1, 1993. Subsequent elections shall be made by April 1 of the year in which such election must be made.

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